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September 22, 2010

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
14th Street, N.W., Suite 5400 East
Washington, DC 20570-0001
VIA E-FILING

Re: Beacon Sales Acquisition, Inc.
d/b/a Quality Roofing Supply Co.
Cases 4-CA-36852 and 4-CA-36879

Dear Mr. Heltzer:

Attached please find Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge in the above-referenced matter. Copies of the subject brief have been served on this day to the parties listed below by email.

Very truly yours,

JENNIFER R. SPECTOR
Counsel for the General Counsel

cc:
Lou Agre, Esq., International Union of Operating Engineers, Local 542, AFL-CIO, via email: agrelou@yahoo.com
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

BEACON SALES ACQUISITION, INC.
D/B/A QUALITY ROOFING SUPPLY COMPANY,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO.

Cases 4-CA-36852 and 4-CA-36879

COUNSEL FOR THE GENERAL COUNSEL'S
ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted,

Dated: September 22, 2010

JENNIFER R. SPECTOR
Counsel for the General Counsel
National Labor Relations Board

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I. STATEMENT OF THE CASE

In a Decision issued July 29, 2010, Administrative Law Judge David I. Goldman found that Beacon Sales Acquisition, Inc. d/b/a Quality Roofing Supply Company (herein called Respondent), violated Section 8(a)(5) of the Act in two respects, summarized here.

(A) Respondent unilaterally increased the health insurance premiums paid by bargaining unit employees

On January 3, 2009, Respondent implemented an increase in the health insurance premiums paid by its employees in four bargaining units of truck drivers and warehouse employees represented by International Union of Operating Engineers Local 542, AFL-CIO (herein called the Charging Party or the Union) at Respondent's North Wales, Pennsylvania, Eddystone, Pennsylvania, York, Pennsylvania, and Yeadon, Pennsylvania facilities. The employees in the four bargaining units are referred to collectively herein as the Unit employees.

As stipulated by Respondent and the General Counsel, and as found by the Judge, Respondent made this change unilaterally and without affording the Union sufficient opportunity to bargain, and without reaching an overall good-faith bargaining impasse.

The Judge's findings and Order were based on the record stipulated by Respondent and the General Counsel. On this record, the Judge correctly found that the Respondent made an unlawful unilateral change in a mandatory subject of bargaining, employee-paid health insurance premiums. Respondent now asserts that it bargained to impasse with the Union on the limited issue of the employee health insurance premiums, despite its stipulation to the contrary. Respondent further excepts, arguing for the first time that this matter involves an exception to the rule of *Bottom Line Enterprises,* 302 NLRB 373 (1991), enfd. mem. 15 F.3d 1987 (9th Cir. 1994) that when parties are engaged in overall contract negotiations, there can be no lawful implementation absent an overall impasse in bargaining. *Bottom Line Enterprises* at 374.

It is urged that these Exceptions be rejected. As discussed below, Respondent relies on arguments which have been considered and rejected under well-established Board precedent. On these facts, as the Judge correctly found, Respondent unlawfully increased its employees' health insurance premiums.

(B) Respondent refused to bargain from July 9 through August 10, 2009

Based on the record stipulated by Respondent and the General Counsel, the Judge correctly found that Respondent unlawfully refused to bargain from July 9 through August 10, 2009. Respondent admits its failure to bargain during this period, but excepts, relying on the "Interim Agreement" it entered with the Union in February 2009. The Judge correctly rejected this defense, finding that the terms of the Interim Agreement were insufficient to privilege Respondent to refuse to bargain. It is urged that Respondent's Exceptions be rejected.

II. PROCEDURAL HISTORY

The Regional Director issued a Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 4-CA-36852 and 4-CA-36879 (Joint Exhibit 2(g)) on December 23, 2009. A copy of the Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing was served on Respondent on December 23, 2009. (Joint Exhibit 2(h)). Respondent filed an Answer to the Consolidated Complaint on January 5, 2010. (Joint Exhibit 2(i)). The Regional Director issued an Amendment and Further Amendment to the Consolidated Complaint on January 5, 2010 and May 18, 2010, respectively (Joint Exhibits 2(j) and 2(q)), and Respondent filed Answers to each on January 11, 2010 and May 20, 2010, respectively (Joint Exhibit 2(p) and 2(s)).

Respondent and the General Counsel entered into a Stipulation of Facts in these cases on

May 24, 2010, and filed a Stipulation on Waiver of Hearing and Joint Motion to Set Date for Filing of Briefs that same day. The Charging Party made certain objections to the Stipulation and Motion by letter, and Administrative Law Judge David I. Goldman issued an Order on May 25, 2010 receiving the stipulation of facts and exhibits into evidence, postponing the hearing indefinitely, and requiring the parties to file their briefs by July 1, 2010. In his Decision, Judge Goldman granted the General Counsel and Respondent's Motion and overruled the Union's objections as moot. (ALJD p. 2 fn. 1)[1]

III. STATEMENT OF FACTS

The Charging Party in this matter, International Union of Operating Engineers Local 542, AFL-CIO, represents four separate bargaining units of truck drivers and warehouse employees at four of Respondent's locations (Consolidated Complaint Para. 5, Respondent's Further Amended Answer Para. 5, ALJD p. 3, ll. 8-12), and has been engaged in bargaining for initial overall collective bargaining agreements at all times material to this matter. (SF6) By letter dated October 23, 2008, (JE3) Respondent proposed making certain changes in its health insurance premiums for the Unit employees. (SF3) (ALJD p. 3, ll. 25-28) The changes Respondent proposed, which were eventually implemented, are set out in JE5.

On December 29, 2008, the Charging Party filed an unfair labor practice charge in Case 4-CA-36509, which alleged that Respondent unlawfully declared impasse concerning health insurance premiums and placed unlawful conditions on the Charging Party's bargaining

1 Citations herein to the Administrative Law Judge's Decision are noted as ALJD with reference to page and line numbers. Citations herein to particular numbered paragraphs of the Respondent and General Counsel's Stipulation of Facts (Joint Exhibit 1), and to Respondent and General Counsel's Joint Exhibits are noted as "SF" and "JE" accordingly, i.e., SF3 indicates Paragraph 3 of the Stipulation of Facts, and JE2 indicates Joint Exhibit 2.

committee's attendance at bargaining. (SF 4, JE 4, ALJD p. 3, l. 30 through p. 4, l. 2) On January 3, 2009, Respondent implemented the changes to health insurance premiums, resulting in increased premiums for the Unit employees. (ALJD p. 4, ll. 4-6) Respondent has stipulated that it implemented these changes without giving the Union sufficient opportunity to bargain, and the Union did not consent to the changes. (SF 5)

On January 22, 2009, Respondent and the Charging Party entered into an "Interim Agreement" (JE21, SF18) which shows, inter alia, certain agreements regarding bargaining. These included the dates, times, and locations of future bargaining sessions, and their agreement to "utilize" a federal mediator. The agreement by its terms expired upon execution of a collective bargaining agreement or 30 days written notice from either party. (JE21, ALJD p. 4, ll. 17-38)

On February 4, 2009, the Regional Director approved the Charging Party's request to withdraw, *inter alia*, the charge in Case 4-CA-36509 (JE7), via letter shown at JE8. (SF8, ALJD p. 5, ll. 16-24) On February 4 and 6, 2009, respectively, Respondent and the Charging Party executed a non-Board settlement of various matters, and on February 17, 2009, Respondent and the Charging Party executed an Amendment to that agreement. (SF7, ALJD p. 4, l. 40 through p. 5, l. 11) The complete non-Board settlement with Amendment is shown at JE6.

During the period from January 30, 2009 through February 9, 2009, Board agents negotiated with Respondent and the Charging Party and reached an agreement for a Formal Settlement Stipulation which was eventually approved by the Regional Director on March 3, 2009, by the Board via its Order of March 26, 2009, and was enforced in the Court of Appeals for the Third Circuit on September 23, 2009. (SF9-SF17, ALJD p. 5, ll. 22-36) The Formal Settlement Stipulation is shown at JE16.

At a bargaining session on July 7, 2009, the Charging Party notified Respondent that it no longer was willing to meet with the participation of a federal mediator, (SF19) and reiterated this position by letter of July 8, 2009. (SF21, JE24, ALJD p. 5 ll.48-50)

From July 9 through August 10, 2009, Respondent refused to meet with the Charging Party without the participation of a federal mediator. (ALJD p. 6, ll. 9-48) Respondent has stipulated that its sole reason for this refusal was the "ground rules" agreement. (JE21, SF22)

IV. ARGUMENT

A. The Administrative Law Judge correctly found that Respondent violated the Act by unilaterally changing its employees' health insurance premiums effective January 3, 2009.

As suggested by the Stipulation of Facts, the issue presented here was a narrow one. Respondent admits that it began charging its employees different amounts for health insurance, effective January 3, 2009. Respondent admits, for purposes of this proceeding, that it failed to give the Union an adequate opportunity to bargain the change before implementing it. The Board has repeatedly held that it is unlawful for an employer to unilaterally increase employee-paid health insurance premiums without sufficient notice and opportunity to bargain. See, e.g., *Maple Grove Health Care Center*, 330 NLRB 775 (2000).

i. Respondent's Exceptions

Respondent argues several points in its Exceptions and Brief in support of them:

a. That, contrary to its stipulation with the General Counsel, it reached impasse with the Union on the subject of employees health insurance premiums, and that this purported impasse was sufficient to privilege its unilateral action; (Exceptions 1, 11, 12, 13, 19)

b. That the Regional Director approved or is otherwise bound by the non-Board settlement; (Exceptions 2, 3, 5)

c. That the Union's withdrawal of a prior unfair labor practice charge "with prejudice" was sufficient to waive its claim with respect to the subject unfair labor practice allegation. (Exceptions 4, 6-10, 14-18)

ii. The Administrative Law Judge correctly found that Respondent did not bargain to impasse with the Union.

The Judge's determination was based on the stipulated record Respondent entered into with the General Counsel. The Judge correctly found that Respondent stipulated that it did not reach an overall impasse in bargaining with the Union. Contrary to Respondent's assertions in its Brief in Support of Exceptions, the Judge did not find impasse with respect to employee-paid insurance premiums.

Respondent stipulated that as of the date of the unilateral implementation, January 3, 2009, it was "engaged in bargaining for initial collective bargaining agreements with the Charging Party, and by that date the Charging Party and Respondent had not reached an overall impasse in bargaining." (SF6). Respondent further stipulated that "[c]onsistent with its second amended answer in this matter, Respondent admits that it implemented these changes without affording the Union sufficient opportunity to bargain them, and that the Union did not consent to these changes before they were implemented on January 3, 2009." (SF5).

Consistent with Respondent's stipulation with the General Counsel, the Judge found that the parties were not at overall impasse in bargaining at the time of the unilateral implementation. (ALJD p. 4, ll. 25-28) Accordingly, the Judge found that the unilateral implementation was unlawful, citing *Bottom Line Enterprises*, supra. (ALJD p. 7, l. 36 through p. 8, l. 7) Respondent now urges, for the first time, that the *Stone Container Corp.*, 313 NLRB 336 (1993) exception to the *Bottom Line Enterprises* rule applies. Respondent insists, in its Brief in Support of Exceptions, that a single line in an exhibit included in the stipulated record (JE3) must be

relied upon to show that the increase in health insurance premiums was a discrete, recurring event within the meaning of *Stone Container* and the cases that follow it. The single reference in that letter to the proposed premium changes as being "[c]onsistent with its annual practice..." is simply insufficient to show that the premium changes were recurring. The stipulated facts are bare of any reference to these changes as recurrent, and in this context, the assertions in the letter are rank hearsay.[2] There was simply no stipulation concerning the facts asserted in the letter, beyond the stipulation that the implemented changes were consistent with Respondent's proposal set out in it. (SF5) Even if credited, the letter does not contain sufficient detail to establish a recurring practice of annual adjustments, as the *Stone Container* exception requires. *TXU Electric Co.*, 343 NLRB 1404, 1406 (2004). As correctly found by the Judge, "there is no evidence to support the contention...that any exception applies here." (ALJD p. 11, ll. 6-8)

Respondent further makes the assertion that "the ALJ rules on the one hand that the 'with prejudice' withdrawal means that the parties were at impasse, but on the other hand that [Respondent] still loses because it stipulated that the parties were not at impasse." This wholly mis-states the Judge's Decision, as he certainly did not find that "the 'with prejudice' withdrawal means that the parties were at impasse." To the contrary, the Judge found, consistent with the stipulated facts, that the parties had not reached an overall impasse in bargaining (ALJD p. 4, ll. 25-28; ALJD p. 11, ll. 5-6), and that the stipulated facts "do[] not sound like impasse, even as to the limited subject of health care." (ALJD p. 11, ll. 15-16) Rather, the Judge stated that *even if*

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2 Respondent and the General Counsel stipulated only that the letter was sent to the Charging Party (SF3), and that the premium changes Respondent unilaterally implemented were consistent with those proposed in the letter (SF5). Cf. *Nabors Alaska Drilling*, 341 NLRB 610 (2004), where there were specific factual findings that "[a]t the end of each calendar year, the healthcare plan is reviewed to determine if adjustments need to be made. This regular annual review and adjustment of the healthcare plan had been conducted for many years before the Union became the certified bargaining agent and continued after the Union became the bargaining agent." *Nabors Alaska Drilling* at 611-12.

the mode of legal analysis urged by Respondent were correct (that is, even if it were appropriate to assume that the parties had once been at impasse with respect to health insurance premiums), this analysis is insufficient to show that an impasse remained with respect to health insurance premiums at the time Respondent implemented. (ALJD p. 10, ll. 27-38, ALJD p. 11, ll. 17-21). Be this as it may, the facts, as stipulated by Respondent, remain: Respondent had not reached an overall impasse in bargaining as of the date of the unlawful implementation, and Respondent had not afforded the Union sufficient opportunity to bargain the changes prior to implementation. (SF5 and SF6, ALJD p. 11, ll. 1-21)

Respondent now seeks to both add to the stipulated record and alter it, by urging for the first time that health insurance premium changes were a discrete, recurring event, and by asserting that its stipulation that it made the changes "without affording the Union sufficient opportunity to bargain them" must be read in conjunction with its predicate, "[c]onsistent with its second amended answer..." (SF5) Respondent appears to assert that its reasons for entering into the stipulation, as explained in the referenced second amended answer, are of some significance in ascertaining the meaning of the stipulated facts. (Respondent's Brief in Support of Exceptions, pp. 13-14) Whatever Respondent's reasons for entering into a stipulation, it is now bound to the stipulated record. Once entered into evidence, these stipulations constitute an admission as to the facts contained therein. Such an admission has the effect of a confessory pleading and is conclusive upon Respondent. *Academy of Art College*, 241 NLRB 454, 455 (1979), enfd. 620 F.2d 720 (9th Cir. 1980). In reliance on Respondent's stipulations, the General Counsel did not put on evidence concerning the status of bargaining prior to the unilateral implementation.[3] Accordingly, Respondent is bound to the facts to which it stipulated. *Arbors*

[3] Respondent admits at p. 9 of its Brief in Support of Exceptions that had there been a hearing in

of New Castle, 347 NLRB 544, 545 (2006), citing *Kroger Co.*, 211 NLRB 363, 364 (1974).

iii. The Administrative Law Judge correctly found that under either *Septix Waste* or *Auto Bus*, the General Counsel is not barred from proceeding in this matter.

Despite the fact that the charge in Case 4-CA-36509 is not congruent with the present allegation concerning health insurance premiums, as will be discussed in further detail infra, even if it did allege precisely the same allegations as the earlier charge, the Regional Director is simply not bound by the settlement.

This issue is squarely controlled by *Auto Bus, Inc.*, 293 NLRB 855 (1989). In *Auto Bus*, the charging party union entered into a non-Board settlement of certain unfair labor practice allegations with the employer. Pursuant to the settlement, the union requested withdrawal of the subject unfair labor practice charge, and the Regional Director approved that request.

As noted by the Judge, Respondent makes nearly identical arguments to those considered and rejected by the Board in *Auto Bus*. (ALJD p. 8 fn. 7) Respondent asserts that because the Regional Director was aware of the settlement and approved the withdrawal requests, she should be estopped from litigating the matters in the withdrawn charge. In *Auto Bus,* citing *Quinn Co.*, 273 NLRB 795 (1984) with approval, the Board found that mere approval of a withdrawal request is not equivalent to entering into or approving a private settlement, stating, "[t]he fact remains that the Regional Director was not an official party to the settlement." *Auto Bus* at 856.

Respondent further argues that the involvement of Board agents in the settlement discussions should bind the Region in some way. The Board similarly considered and rejected that argument summarily in *Auto Bus*, stating, "we find that such Board agent involvement is

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this matter, it would have been "largely devoted to the 'he said/she said' of the health care bargaining sessions that occurred in December 2009."

immaterial." *Auto Bus* at 856. The Board also noted as a factor in its consideration the fact that the non-Board settlement in question did not remedy the allegations the Region sought to litigate. Similarly, Respondent's non-Board settlement with the Union does not remedy, or even mention, the unilateral changes it made in employees' health insurance premiums in January 2009.

The Board re-affirmed in recent years that the *Auto Bus* rule is controlling when an employer has sought to bar the Board from proceeding on charges filed subsequent to a non-Board settlement. *KFMB Stations*, 343 NLRB 748, 748 fn. 3 (2004). However, the Board held in *Septix Waste, Inc.*, 346 NLRB 494 (2006), that the *Auto Bus* line of cases was inapposite in that case, and the Administrative Law Judge found *Septix Waste* difficult to square with *Auto Bus*. (ALJD p. 9, ll. 21-30) *Septix Waste* presented an employer and union who had entered into a non-Board stipulation that the union "resigns all claims made or that could have been made to this date" except certain enumerated claims. Subsequently, the Union filed certain claims that were based on matters arising before the date certain in the settlement stipulation. The Board held in *Septix Waste* that in the circumstances of that case, it would apply the *Independent Stave*, 287 NLRB 740 (1987) analysis to determine whether it would give effect to the parties' settlement.

Septix Waste is most readily distinguishable from the present case on the ground that the parties' settlement in that matter clearly covered all matters occurring before a date certain; the same is not true here. As correctly found by the Judge, the subject non-Board settlement is inadequate to show the Union waived the present claim. (ALJD p. 9, ll. 32-35)

iv. The Administrative Law Judge correctly found that the Union had not waived the subject unfair labor practice claim.

Respondent here admits that it made the alleged change unilaterally. In defending this allegation, it relied on but a single defense: that the Union and Respondent settled this matter,

along with others, as part of a non-Board settlement executed in February 2009. (JE6) The non-Board settlement states that "[t]he Union will inform the Region...that the Union and its members are withdrawing all unfair labor practice charges...with prejudice," without enumerating what charges or allegations were to be withdrawn. The settlement itself does not purport to settle any matter related to health insurance or health insurance premiums. Thus Respondent does not, indeed can not, point to any explicit language in the non-Board settlement which would lay this matter to rest. There was no agreement to settle claims arising before the date of the settlement, no agreement to settle all substantially similar claims, and no agreement that this document would settle "all matters" between the parties. Rather, Respondent can only argue that the intent to settle the allegation of the instant case should be assumed by the Union's agreement to withdraw unspecified unfair labor practice charges pursuant to the settlement. The Judge correctly found that this was insufficient to operate as a waiver of the Union's claim here. (ALJD p. 10, ll. 16-23)

The charge Respondent relies on is shown at JE4. Notably, not only does this charge fail to allege any unilateral change in health insurance benefits, it was actually filed on December 29, 2008, five days before the change in question took place. Instead, the charge alleged that Respondent had "declared impasse" concerning health insurance premiums, and that Respondent had placed certain unlawful conditions on the Union's bargaining committee. As correctly found by the Judge, a "declaration of impasse" is by no means congruent with the implementation of a unilateral change. (ALJD p. 10, ll. 16-17) Indeed, the Board will consider whether a declaration of impasse, absent any implementation, violates the Act. *ServiceNet, Inc.*, 340 NLRB 1245 (2003) (insistence to impasse on permissive subjects, declaration of impasse, and threat to implement final offer held violative), cf. *Decker Coal*, 301 NLRB 729, 729 fn. 2 (1991)

(declaration of impasse itself not an independent violation). A lawful impasse might be a defense to a unilateral change allegation, but the declaration of impasse may accompany an implementation, or may not, and may constitute an independent violation, or may not. The allegation that Respondent unilaterally implemented changes in its employees' health insurance premiums is simply not encompassed by the terms of Respondent's settlement with the Union, because the Union agreed to withdraw "with prejudice" a different allegation than the unilateral implementation of health insurance premiums.

Finally, Respondent is essentially forced to argue that the non-Board settlement should be construed loosely and/or broadly to encompass the allegation brought herein, because the language of the settlement itself simply does not cover the matter alleged. However, the opposite is true. As the Judge appropriately noted, "waivers do not sweep so broadly or vaguely in Board precedent," citing *Metropolitan Edison v. NLRB,* 460 U.S. 693 (1983) (ALJD p. 10, ll. 11-14 and fn. 9) Rather, waivers of statutory rights must be "clear and unmistakable" if they are to bind the waiving party. *Metropolitan Edison* at 708.

B. The Administrative Law Judge correctly found that Respondent violated the Act by refusing to meet and bargain with the Union from July 7, 2009 through August 10, 2009.

i. Respondent's Exceptions

Respondent makes two overall arguments in its Exceptions and Brief in support of them:

a. That the terms of the Interim Agreement mandated the use of a federal mediator at all bargaining sessions; (Exceptions 20-22, 26)

b. That the violation of the Act found is de minimis and does not warrant any remedy. (Exceptions 23-25)

ii. The Administrative Law Judge correctly found that the language of the Interim Agreement was insufficient to privilege Respondent's refusal to meet.

The use of a mediator is a permissive subject of bargaining. Accordingly, any party may propose bargaining with the participation of a mediator, but no party may insist to impasse on using a mediator. Similarly, no party may refuse to bargain simply because the other party does not wish to use a mediator. These basic principles are well-established in Board law. *Kurdziel Iron,* 327 NLRB 155, 162 (1998) As noted by the Judge, *Detroit Newspapers*, 326 NLRB 700, 704 fn. 11 (1998), rev'd on other grounds, 216 F.3d 109 (D.C. Cir. 2000) holds that the Board is "committed to 'providing parties with the flexibility to enter into and deviate from new bargaining formats without the risk of being found to have violated their obligation to bargain in good-faith' as this 'facilitates effective bargaining and encourages productive experimentation.'" (ALJD pp. 14-15 fn. 13, citing *Detroit Newspapers* at 704 fn. 11)

The Judge found that the language of the parties' Interim Agreement (JE21), which stated that they would "utilize the FMCS mediator during their negotiations," was simply insufficient to hamstring the Union and require it to bargain exclusively with the participation of a mediator. Respondent would have us look to the dictionary to ascertain the meaning of "during," but this reference does not advance its argument. In addition to Respondent's preferred definitions, "during" can mean "at a time or point in the course of," e.g., a salad course was served during dinner. See, Merriam Webster's Tenth Collegiate Dictionary (1996), also Dictionary.com (2010). It need not mean "throughout." As aptly noted by the Judge, the language of the Interim Agreement is susceptible of Respondent's interpretation, among others, but it is "not explicit and it is not clear and unmistakable based solely on the language of the Interim Agreement." (ALJD p. 15, ll. 45-49)

Respondent further argues that the Judge's findings with respect to the Interim Agreement result in his having "read out" the 30-day termination provision. There is no reason why this would be so. The Interim Agreement contains a number of provisions, several of which have nothing to do with overall contract bargaining. By its terms, the termination provision applies to all of them.

iii. The Administrative Law Judge correctly found that the violation here is not de minimis.

Respondent urges that its refusal to meet with the Union from July 9 through August 10, 2009 was de minimis and does not warrant a remedy. Although its refusal to meet was for a limited period, the record is completely devoid of any evidence that Respondent's refusal has been cured or remedied in any way. The Board limits the application of the "de minimis" standard to situations where "the unlawful conduct has been substantially remedied or significantly contradicted by later conduct." *Dish Network Service Corp.*, 339 NLRB 1126, 1128 fn. 11 (2003), *Golub Corp.*, 338 NLRB 515, 517 (2002).

V. CONCLUSION

It is respectfully urged that the Board affirm the Decision issued by Judge Goldman, find that Respondent violated the Act as alleged in the Complaint, and assess all appropriate remedies.

Respectfully submitted,

Dated: September 22, 2010

JENNIFER R. SPECTOR
Counsel for the General Counsel
National Labor Relations Board